

NATIONAL RURAL TELECOM ASSOCIATION

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**STATEMENT FOR THE RECORD BY JOHN F. O'NEAL, GENERAL
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IMPLEMENTING THE NEW TITLE VI-BROADBAND

- **CONGRATULATIONS ON HOLDING THIS FORUM PERMITTING THE PUBLIC TO COMMENT ON IMPLEMENTATION OF THE NEW BROADBAND PROGRAM! I AM JOHN F. O'NEAL AND AM APPEARING ON BEHALF OF THE NATIONAL RURAL TELCOM ASSOCIATION**
- **I APPLAUD CONGRESS FOR GIVING THIS IMPORTANT NEW RESPONSIBILITY TO RUS WHICH HAS A PROVEN TRACK RECORD IN THIS AREA!**
- **THIS NEW AUTHORITY WITH ITS BUILT IN FUNDING MECHANISM HAS THE POTENTIAL FOR CHANGING THE FACE OF RURAL AMERICA MUCH LIKE THE ORIGINAL REA ACT AND THE TELEPHONE AMENDMENT DID YEARS AGO!**
- **HOWEVER, THERE ARE SOME PROBLEMS IN THE STATUTORY LANGUAGE THAT MUST BE WORKED OUT IF THE NEW PROGRAM IS TO ACHIEVE ITS FULL POTENTIAL**
- **FIRST, THERE IS A PROBLEM WITH THE ELIGIBILITY CRITERIA SECTION:**
 - "Sec. 601. Access to broadband Telecommunications Services in Rural Areas**
 - (b) Definitions. --In this section: ...**
 - ...(2) Eligible Rural Community.--The term 'eligible rural community'**
 - means any incorporated or unincorporated place that--**
 - (A) has not more than 20,000 inhabitants, based on the most recent available population statistics of the Bureau of the Census; and**
 - (B) is not located in an area designated as a standard metropolitan statistical area."**
- **THE REFERENCE IN (B) TO A STANDARD METROPOLITAN STATISTICAL AREA IS DEFECTIVE AND PROGRAM DEFEATING.**

- THE BUREAU OF THE CENSUS HAS NOT RECOGNIZED "STANDARD METROPOLITAN STATISTICAL AREAS" SINCE BEFORE 1990.**
- **THE CURRENT CENSUS BUREAU TERMS FOR METROPOLITAN AREAS (MA's) ARE: METROPOLITAN STATISTICAL AREAS (MSAs) ; CONSOLIDATED METROPOLITAN STATISTICAL AREAS (CMSA'S); AND PRIMARY METROPOLITAN STATISTICAL AREAS (PMSAs).**
 - **BASED UPON 2000 CENSUS FIGURES, THERE ARE 23,431 PLACES IN THE U.S. WITH POPULATIONS OF 20,000 OR LESS. OF THESE, 6,647 ARE IN SMAs. ANOTHER 3,309 ARE IN CMSAs. THEREFORE, DEPENDING UPON HOW ONE INTERPRETS THE STATUTORY LANGUAGE IN (B), AS MANY AS 9,983 PLACES IN THE U.S. WHICH WOULD OTHERWISE BE ELIGIBLE SINCE THEY HAVE LESS THAN 20,000 POPULATION, MIGHT BE EXCLUDED FROM THIS NEW PROGRAM -THAT'S OVER 40%!**
 - **BEAR IN MIND THAT THIS NEW PROGRAM IS DESIGNED TO FACILITATE DEPLOYMENT OF BROADBAND TECHNOLOGY IN RURAL AREAS. HOW CAN THAT BE ACCOMPLISHED IF YOU EXCLUDE OVER 40% OF THE SMALL TOWNS OF AMERICA FROM THE OUTSET?**
 - **THERE ARE A SIGNIFICANT NUMBER OF RURAL AREAS IN SMAS AND CMSAs BECAUSE OF THE WAY THESE MSAs ARE CONSTRUCTED**
 - **AS A RURAL/URBAN DIFFERENTIAL SMAs SIMPLY DO NOT WORK.**
 - **THIS FACT HAS BEEN RECOGNIZED BY THE OFFICE OF MANAGEMENT AND BUDGET WHICH HAS CAUTIONED AGAINST USING MA DATA FOR PROGRAMMIC PURPOSES AND HAS STATED THAT OMB ESTABLISHES AND MAINTAINS THE DEFINITIONS OF MAs SOLELY FOR THE STATISTICAL PURPOSES POINTING OUT THAT THE USE OF THESE DEFINITIONS FOR NONSTATISTICAL PURPOSES OFTEN RESULTS IN UNINTENDED CONSEQUENCES. (SEE OMB BULLETIN NO. 99-04)**
 - **THERE IS NO LEGISLATIVE HISTORY TO CLARIFY THIS OBVIOUS MISTAKE IN LEGISLATIVE DRAFTING WHICH HOPEFULLY CONGRESS WILL CORRECT IN FUTURE LEGISLATION!**
 - **IN THE MEANTIME, IT IS SIMPLY NOT POSSIBLE TO ASCERTAIN CONGRESS' INTENT AND IT IS IMPOSSIBLE TO GIVE THIS EXCLUSION A LITERAL INTERPRETATION BECAUSE THERE ARE NO SMSAs ANYMORE**

- **IT IS A WELL ESTABLISHED PRINCIPLE OF STATUTORY CONSTRUCTION THAT A STATUTE SHOULD NOT BE READ LITERALLY WHERE SUCH A READING IS CONTRARY TO ITS PURPOSES.**
- **IT IS REASONABLE TO ASSUME THAT CONGRESS WAS ATTEMPTING TO DISTINGUISH BETWEEN URBAN AND RURAL AREAS AND EXCLUDE THOSE AREAS WHICH ARE OBVIOUSLY URBAN**
- **AS A MATTER OF FACT, RUS ALREADY HAS ESTABLISHED SUCH A STANDARD IN ITS EXISTING REGULATIONS GOVERNING THE TELEMEDICINE, DISTANCE LEARNING AND THE PILOT PROGRAM FOR BROADBAND DEPLOYMENT.**
- **IN AN EFFORT TO GIVE MEANING TO THE ELIGIBILITY CRITERIA IN THE STATUTE , IT SEEMS TO ME TO MAKE SENSE FOR RUS TO ADOPT THE EXISTING URBAN/RURAL REGULATORY STANDARD FOR TITLE VI. THAT WOULD ALSO ELIMINATE POTENTIAL APPLICANT CONFUSION AND FACILITATE PROGRAM ADMINISTRATION.**
- **WHILE IT IS NOT ENTIRELY CLEAR, THE LANGUAGE OF THE SECTION DEALING WITH LOAN TERMS AND CONDITIONS SEEMS TO AUTHORIZE TWO DIRECT LOAN PROGRAMS, ONE AT A STATUTORY INTEREST RATE OF 4% AND ONE AT THE GOVERNMENT'S COST-OF-MONEY.**
- **THE OTHER INTREPRETATION WOULD MEAN ONE LOAN PROGRAM WITH AN INTEREST RATE FLOOR OF 4% AND A CEILING AT THE GOVERNMENT'S COST-OF-MONEY WITH EACH LOAN APPROVED AT AN INTEREST RATE SOMEWHERE IN BETWEEN. I DON'T THINK THIS IS WHAT CONGRESS INTENDED.**
- **I WOULD HOPE THAT THE AGENCY WOULD INTERPRET THIS LANGUAGE IN A WAY WHICH WILL MAKE MAXIMUM USE OF THE FUNDS MADE AVAILABLE. CRITERIA SIMILAR TO THE EXISTING TELEPHONE LOAN HARDSHIP AND COST-OF-MONEY PROGRAMS WOULD ACHIEVE THIS PURPOSE.**
- **THE REFINANCING AUTHORITY IS ESPECIALLY SIGNIFICANT AT TODAY'S INTEREST RATES AND COULD FURNISH AN INCENTIVE TO EXISTING BORROWERS TO DEPLOY BROADBAND PARTICULARLY IF THE IMPLEMENTING REGULATIONS LIBERALLY INTERPRET THIS AUTHORITY.**

- **I AM CONCERNED THAT THE PROVISIONS REGARDING THE ALLOCATION OF FUNDS ANNUALLY TO A NATIONAL RESERVE DESIGNED TO GIVE PRIORITY TO CERTAIN STATES IS UNNECESSARILY CUMBERSOME AND WILL SERVE TO IMPEDE APPROVAL OF LOANS IN THE OTHER STATES . HOPEFULLY, THAT WON'T BE THE CASE BUT, I AM REMINDED THAT THE EXISTING RUS PROGRAMS HAVE WORKED JUST FINE WITHOUT SUCH A PRIORITY SYSTEM AND EVERY STATE HAS BENEFITTED AS A RESULT.**
- **THE PROVISION MAKING STATE AND LOCAL GOVERNMENTS ELIGIBLE FOR LOANS AND LOAN GUARANTEES "ONLY IF, NOT LATER THAN 90 DAYS AFTER THE ADMINISTRATOR HAS PROMULGATED REGULATIONS, NO OTHER ELIGIBLE ENTITY IS OFFERING OR HAS COMMITTED TO OFFER BROADBAND SERVICES TO THE ELIGIBLE COMMUNITY" SHOULD BE HIGHLIGHTED IN AGENCY NOTICES TO EXISTING BORROWERS AND OTHER ELIGIBLE APPLICANTS TO AVOID CONFUSION AND FUTURE MISUNDERSTANDING. ALSO, THE PROCEDURE FOR "COMMITTING TO OFFER" THESE SERVICES SHOULD BE SPELLED OUT WITH CLARITY IN THE REGULATIONS TO FACILITATE COMPLIANCE.**
- **AS A FINAL SUGGESTION, WE BELIEVE IT IS SIGNIFICANT THAT THE CONGRESS CHOSE TO CREATE THIS NEW BROADBAND PROGRAM AS AN ADJUNCT TO THE RURAL ELECTRIFICATION ACT AND GIVE THE RESPONSIBILITY FOR ITS IMPLEMENTATION TO THE RURAL UTILITIES SERVICE OF THE DEPARTMENT OF AGRICULTURE. FOR THIS REASON, IMPLEMENTING REGULATIONS SHOULD TRACK THE ADMINISTRATION OF THE EXISTING TELEPHONE LOAN PROGRAMS AS CLOSELY AS POSSIBLE. IT IS A PROVEN MODEL THAT HAS WORKED SUCCESSFULLY FOR THE PEOPLE OF RURAL AMERICA FOR OVER FIFTY YEARS! I WOULD URGE YOU TO ACT EXPEDIOUSLY TO ADOPT REGULATIONS SO THIS PROGRAM CAN GET UNDERWAY AS SOON AS POSSIBLE –EVEN IN THIS FISCAL YEAR!**
- **THANK YOU FOR THE OPPORTUNITY TO PRESENT THE VIEWS OF THE NATIONAL RURAL TELECOM ASSOCIATION**

**NUMBER OF PLACES IN THE UNITED STATES UNDER 20,000 POPULATION
EXCLUDED BY SMSA CRITERIA CONTAINED IN SECTION 601(b) (2) (B) OF
Pub. L. 107-171**

AL	201	MN	234	VA	65
AR	115	MO	332	VT	7
AZ	94	MS	50	WA	67
CA	270	MT	28	WI	130
CO	37	NC	262	WV	70
CT	56	ND	44	WY	24
DE	25	NE	50		
FL	472	NM	84	TOTAL	6647
GA	177	NV	30		
HI	38	NY	304		
IA	137	OH	317		
ID	17	OK	168		
IL	252	OR	24		
IN	206	PA	790		
KS	71	PR	42		
KY	145	RI	15		
LA	174	SC	173		
MA	47	SD	29		
MD	8	TN	133		
ME	18	TX	396		
MI	155	UT	64		